* * * * *

(b) Attention Signal. EAS Decoders shall have detection and activation circuitry that will demute a receiver upon detection of the two audio tones of 853 Hz and 960 Hz. To prevent false responses, decoders designed to use the two tones for receiver demuting shall comply with the following:

* * * * *

10. Amend § 11.34 by revising paragraph (e) to read as follows:

§ 11.34 Acceptability of the equipment.

* * * * *

(e) Waiver requests of the Certification requirements for EAS Encoders or EAS Decoders which are constructed for use by an EAS Participant, but are not offered for sale will be considered on an individual basis in accordance with part 1, subpart G, of this chapter.

* * * * *

11. Revise § 11.35 to read as follows:

§ 11.35 Equipment operational readiness.

(a) EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in § 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§ 73.1820 and 73.1840 of this chapter for all broadcast streams and cable system records as specified in §§ 76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any tests were not received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.

(b) If the EAS Encoder or EAS Decoder becomes defective, the EAS Participant may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority. Entries shall be made in the broadcast station log, cable system records, and records of other EAS Participants, as specified in part (a) of this rule, showing the date and time the equipment was removed and restored to service. For personnel training purposes, the required monthly test script must still be transmitted even though the equipment for generating the EAS message codes, Attention Signal and EOM code is not functioning.

(c) If repair or replacement of defective equipment is not completed within 60 days, an informal request shall be submitted to the District Director of the FCC field office serving the area in which the EAS Participant is located, or in the case of DBS and SDARS providers to the District Director of the FCC field office serving the area where their headquarters is located, for additional time to repair the defective equipment. This request must explain what steps have been taken to repair or replace the defective equipment, the alternative procedures being used while the defective equipment is out of service, and when the defective equipment will be repaired or replaced.

12. Revise § 11.41 to read as follows:

§ 11.41 Participation in EAS.

(a) All EAS Participants specified in § 11.11 are categorized as Participating National (PN) sources unless authorized by the FCC to be Non-Participating (NN) sources.

(b) An EAS Participant may submit a written request to the FCC asking to be an NN source. The FCC may then issue a Non-participating National Authorization letter. NN sources must go off the air during a national EAS activation after transmitting specified information.

(1) An EAS Participant that is an NN source under § 11.18(f) that wants to become a PN source in the national level EAS must submit a written request to the FCC.

(2) NN sources may voluntarily participate in the State and Local Area EAS. Participation is at the discretion of EAS Participant management and should comply with State and Local Area EAS Plans.

(c) All sources, including NN, must have immediate access to an EAS Operating Handbook.

13. Amend § 11.42 by revising paragraphs (a)(1), (a)(2), (b), and (c) to read as follows:

§ 11.42 Participation by communications common carriers.

(a) * * *

(1) An originating source from the nearest service area to a selected Test Center and then to the EAS Participant for the duration of the emergency, provided an Emergency Action Notification is issued by the White House and the originating source has a local channel from the originating point to the nearest service area.

(2) An independent broadcast station to the radio and television broadcast networks and any other EAS Participant provided the station has in service a local channel from the station's studio or transmitter directly to the broadcast source.

(b) Upon receipt of the Emergency Action Termination, the common carriers shall disconnect the originating source and the participating independent stations and restore the networks and other EAS Participants to their original configurations.

(c) During a National level EAS Test, common carriers which have facilities in place may, without charge, connect an originating source from the nearest exchange to a selected Test Center and then to any EAS Participant. Independent stations will not be connected during the test unless authorized by the FCC. Upon test termination, EAS Participants shall be restored to their original configurations.

* * * * *

14. Amend § 11.44 by revising paragraph (d) to read as follows:

§ 11.44 EAS message priorities.

* * * * *

(d) During a national emergency, the facilities of all EAS Participants must be reserved exclusively for distribution of Presidential Messages. NIC messages received from national networks which are not broadcast at the time of original transmission must be recorded locally by LP sources for transmission at the earliest opportunity consistent with the message priorities in paragraph (b) of this section.

15. Revise § 11.46 to read as follows:

§ 11.46 EAS public service announcements.

EAS Participants may use Public Service Announcements or obtain commercial sponsors for announcements, infomercials, or programs explaining the EAS to the public. Such announcements and programs may not be a part of alerts or tests, and may not simulate or attempt to copy alert tones or codes.

16. Revise § 11.47 to read as follows:

§ 11.47 Optional use of other communications methods and systems.

(a) Analog and digital broadcast stations may additionally transmit EAS messages through other communications means. For example, on a voluntary basis, FM stations may use subcarriers to transmit the EAS codes including 57 kHz using the RBDS standard produced by the National Radio Systems Committee (NRSC) and television stations may use subsidiary communications services.

(b) Other technologies and public service providers, such as low earth orbiting satellites, that wish to participate in the EAS may contact the FCC's Office of Homeland Security, Enforcement Bureau, or their State Emergency Communications Committee for information and guidance.

17. Revise § 11.51 to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) Analog and digital broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) codes using the EAS Protocol. The Attention Signal must precede any emergency audio message. After January 1, 1998, the shortened Attention Signal may only be used as an

audio alert signal and the EAS codes will become the minimum signaling requirement for National level messages and tests.

(b) When relaying EAS messages, EAS Participants may transmit only the EAS header codes and the EOM code without the Attention Signal and emergency message for State and local emergencies. Pauses in video programming before EAS message transmission should not cause television receivers to mute EAS audio messages. No Attention Signal is required for EAS messages that do not contain audio programming, such as a Required Weekly Test.

(c) By the effective dates provided in § 11.11(a), all analog and digital radio and television stations shall transmit EAS messages in the main audio channel. Effective December 31, 2006, all DAB stations shall also transmit EAS messages on all audio streams. Effective December 31, 2006, all DTV broadcast stations shall also transmit EAS messages on all program streams.

(d) By the effective dates provided in § 11.11(a), analog and digital television broadcast stations shall transmit a visual message containing the Originator, Event, Location and the valid time period of an EAS message. If the message is a video crawl, it shall be displayed at the top of the television screen or where it will not interfere with other visual messages.

(e) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, analog low power TV (LPTV) stations as defined in § 74.701(f) of this chapter, and digital LPTV stations as defined in § 74.701(k) of this chapter are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

(f) Analog and digital broadcast station equipment generating the EAS codes and the Attention Signal shall modulate a broadcast station transmitter so that the signal broadcast to other EAS Participants alerts them that the EAS is being activated or tested at the National, State or Local Area level. The minimum

level of modulation for EAS codes, measured at peak modulation levels using the internal calibration output required in §11.32(a)(4), shall modulate the transmitter at the maximum possible level, but in no case less than 50% of full channel modulation limits. Measured at peak modulation levels, each of the Attention Signal tones shall be calibrated separately to modulate the transmitter at no less than 40%. These two calibrated modulation levels shall have values that are within 1 dB of each other.

(g) Analog cable systems and digital cable systems with fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section on at least one channel. The Attention Signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

(1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in § 76.605 of this chapter,

(2) Must provide a video interruption and an audio alert message on all channels. The audio alert message must state which channel is carrying the EAS video and audio message,

(3) Shall transmit a visual EAS message on at least one channel. The message shall contain the Originator, Event, Location, and the valid time period of the EAS message. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(5) Wireless cable systems and digital cable systems with a requirement to carry the audio and video EAS message on at least one channel and a requirement to provide video interrupt and an audio alert message on all other channels stating which channel is carrying the audio and video EAS message, may comply by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

(h) Analog cable and digital cable systems with 10,000 or more subscribers; analog cable and digital cable systems serving 5,000 or more, but less than 10,000 subscribers per headend; and wireless cable systems with 5,000 or more subscribers shall transmit EAS audio messages in the same order specified in paragraph (a) of this section. The Attention Signal may be produced from a storage device. Additionally, these analog cable systems, digital cable systems, and wireless cable systems:

(1) Must install, operate, and maintain equipment capable of generating the EAS codes. The modulation levels for the EAS codes and Attention Signal for analog cable systems shall comply with the aural signal requirements in § 76.605 of this chapter. This will provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers. Wireless cable systems and digital cable systems shall also provide sufficient signal levels to operate subscriber television and radio receivers equipped with EAS decoders and to audibly alert subscribers.

(2) Shall transmit the EAS audio message required in paragraph (a) of this section on all downstream channels.

(3) Shall transmit the EAS visual message on all downstream channels. The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(4) May elect not to interrupt EAS messages from broadcast stations based upon a written agreement between all concerned. Further, analog cable systems, digital cable systems, and wireless cable systems may elect not to interrupt the programming of a broadcast station carrying news or weather related emergency information with state and local EAS messages based on a written agreement between all parties.

(5) Wireless cable systems and digital cable systems with a requirement to carry the audio and video EAS message on all downstream channels may comply by using a means on all programmed channels that automatically tunes the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages.

(i) Effective December 31, 2006, SDARS licensees shall transmit national audio EAS messages on all channels in the same order specified in paragraph (a) of this section.

(1) SDARS licensees must install, operate, and maintain equipment capable of generating the EAS codes.

(2) SDARS licensees may determine the distribution methods they will use to comply with this requirement.

(j) Effective May 31, 2007, DBS providers shall transmit national audio and visual EAS messages on all channels in the same order specified in paragraph (a) of this section.

(1) DBS providers must install, operate, and maintain equipment capable of generating the EAS codes.

(2) The visual message shall contain the Originator, Event, Location and the valid time period of the EAS message. These are elements of the EAS header code and are described in § 11.31. If the visual message is a video crawl, it shall be displayed at the top of the subscriber's television screen or where it will not interfere with other visual messages.

(3) DBS providers may determine the distribution methods they will use to comply with this requirement. Such methods may include distributing the EAS message on all channels, using a means to automatically tune the subscriber's set-top box to a pre-designated channel which carries the required audio and video EAS messages, and/or passing through the EAS message provided by programmers and/or local channels (where applicable).

(k) If manual interrupt is used as authorized in paragraph (m) of this section, EAS Encoders must be located so that EAS Participant staff, at normal duty locations, can initiate the EAS code and Attention Signal transmission.

(l) EAS Participants that are co-owned and co-located with a combined studio or control facility, (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may provide the EAS transmitting requirements contained in this section for the combined stations or systems with one EAS Encoder. The requirements of § 11.32 must be met by the combined facility.

(m) EAS Participants are required to transmit all received EAS messages in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT), and when the accompanying location codes include their State or State/county. These EAS messages shall be retransmitted unchanged except for the LLLLLLLL-code which identifies the EAS Participant retransmitting the message. See § 11.31(c). If an EAS source originates an EAS message with the Event codes in this paragraph, it must include the location codes for the State and counties in its service area. When transmitting the required weekly test, EAS Participants shall use the event code RWT. The location codes are the state and county for the broadcast station city of license or system community or city. Other location codes may be included upon approval of station or system management. EAS messages may be transmitted automatically or manually.

(1) Automatic interrupt of programming and transmission of EAS messages are required when facilities are unattended. Automatic transmissions must include a permanent record that contains at a minimum the following information: Originator, Event, Location and valid time period of the message. The decoder performs the functions necessary to determine which EAS messages are automatically transmitted by the encoder.

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and include the minimum information required for EAS video messages.

(n) EAS Participants may employ a minimum delay feature, not to exceed 15 minutes, for automatic interruption of EAS codes. However, this may not be used for the EAN event which must be transmitted immediately. The delay time for an RMT message m ;y not exceed 60 minutes.

(o) Either manual or automatic operation of EAS equipment may be used by EAS Participants that use remote control. If manual operation is used, an EAS decoder must be located at the remote control location and it must directly monitor the signals of the two assigned EAS sources. If direct monitoring of the assigned EAS sources is not possible at the remote location, automatic operation is required. If automatic operation is used, the remote control location may be used to override the transmission of an EAS alert. EAS Participants may change back and forth between automatic and manual operation.

18. Revise § 11.52 to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) EAS Participants must be capable of receiving the Attention Signal required by § 11.32(a)(9) and emergency messages of other broadcast stations during their hours of operation. EAS Participants must install and operate during their hours of operation, equipment capable of receiving and decoding, either

automatically or manually, the EAS header codes, emergency messages and EOM code. EAS Participants must comply with these requirements by the dates set forth in § 11.11.

NOTE TO PARAGRAPH (a): The two-tone Attention Signal will not be used to actuate two-tone decoders but will be used as an aural alert signal.

(b) If manual interrupt is used as authorized in § 11.51(m)(2), decoders must be located so that operators at their normal duty stations can be alerted immediately when EAS messages are received.

(c) EAS Participants that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facility.

(d) EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.

(1) If the required EAS sources cannot be received, alternate arrangements or a waiver may be obtained by written request to the FCC's EAS office. In an emergency, a waiver may be issued over the telephone with a follow up letter to confirm temporary or permanent reassignment.

(2) The management of EAS Participants shall determine which header codes will automatically interrupt their programming for State and Local Area emergency situations affecting their audiences.

(e) EAS Participants are required to interrupt normal programming either automatically or manually when they receive an EAS message in which the header code contains the Event codes for Emergency Action Notification (EAN), Emergency Action Termination (EAT), and Required Monthly Test (RMT) for their State or State/county location.

(1) Automatic interrupt of programming is required when facilities are unattended. Automatic operation must provide a permanent record of the EAS message that contains at a minimum the following information: Originator, Event, Location and valid time period of the message.

(2) Manual interrupt of programming and transmission of EAS messages may be used. EAS messages with the EAN Event code must be transmitted immediately and Monthly EAS test messages within 60 minutes. All actions must be logged and recorded as specified in §§ 11.35(a) and 11.54(b)(13). Decoders must be programmed for the EAN and EAT Event header codes for National level emergencies and the RMT and RWT Event header codes for required monthly and weekly tests, with the appropriate accompanying State and State/county location codes.

19. Amend § 11.53 by revising paragraphs (a) and (c) to read as follows:

§ 11.53 Dissemination of Emergency Action Notification.

* * * * *

(a) National Level. The EAN is issued by the White House. The EAN message is sent from a government origination point to broadcast stations and other entities participating in the PEP system. It is then disseminated via EAS Participants.

* * * * *

(c) Analog and digital broadcast stations must, prior to commencing routine operation or originating any emissions under program test, equipment test, experimental, or other authorizations, determine whether the EAS has been activated by monitoring the assigned EAS sources as specified in their State or Local plan.

20. Amend § 11.54 by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 11.54 EAS operation during a National Level emergency.

* * * * *

(b) Immediately upon receipt of an EAN message, EAS Participants must:

(1) Monitor the two EAS sources assigned in the State or Local Area plan or FCC Mapbook for any further instructions. SDARS licensees and DBS providers may choose their two EAS sources, one of which must be a PEP station.

(2) Discontinue normal programming and follow the transmission procedures in the appropriate section of the EAS Operating Handbook. Announcements may be made in the same language as the primary language of the EAS Participant.

(i) Key EAS sources (National Primary (NP), Local Primary (LP), State Primary (SP), State Relay (SR) and Participating National (PN) sources) follow the transmission procedures and make the announcements in the National Level Instructions of the EAS Operating Handbook.

(ii) Non-participating National (NN) sources follow the transmission procedures and make the sign-off announcement in the EAS Operating Handbook's National Level Instructions section for NN sources. After the sign-off announcement, NN sources are required to remove their carriers or services from the air and monitor for the Emergency Action Termination message. NN sources using automatic interrupt under § 11.51(m)(1), must transmit the header codes, Attention Signal, sign-off announcement and EOM code after receiving the appropriate EAS header codes for a national emergency.

(3) After completing the above transmission procedures, key EAS and Participating National sources must transmit a common emergency message until receipt of the Emergency Action Termination Message. Message priorities are specified in § 11.44. If LP or SR sources of a Local Area cannot provide an emergency message feed, any source in the Local Area may elect to provide a message feed. This should be done in an organized manner as designated in State and Local Area EAS Plans.

(4) The Standby Script shall be used until emergency messages are available. The text of the Standby Script is in the EAS Operating Handbook's section for Participating sources.

(5) Analog and digital TV broadcast stations shall display an appropriate EAS slide and then transmit all EAS announcements visually and aurally as specified in §§ 11.51(a) through (e) and 73.1250(h) of this chapter.

(6) Analog cable systems, digital cable systems, and wireless cable systems shall transmit all EAS announcements visually and aurally as specified in § 11.51(g) and (h).

(7) DBS providers shall transmit all EAS announcements visually and aurally as specified in § 11.51(j).

(8) Announcements may be made in the same language as the primary language of the EAS participant.

(9) Analog and digital broadcast stations may transmit their call letters and analog cable systems, digital cable systems and wireless cable systems may transmit the names of the communities they serve during an EAS activation. State and Local Area identifications must be given as provided in State and Local Area EAS plans.

(10) All analog and digital broadcast stations and analog cable systems, digital cable systems and wireless cable systems operating and identified with a particular EAS Local Area must transmit a common national emergency message until receipt of the Emergency Action Termination.

(11) Analog and digital broadcast stations, except those holding an EAS Non-participating National Authorization letter, are exempt from complying with §§ 73.62 and 73.1560 of this chapter (operating power maintenance) while operating under this part.

(12) National Primary (NP) sources must operate under the procedures in the National Control Point Procedures.

(13) The time of receipt of the EAN and Emergency Action Termination messages shall be entered by analog and digital broadcast stations in their logs (as specified in §§ 73.1820 and 73.1840 of this chapter), by analog and digital cable systems in their records (as specified in § 76.1711 of this chapter), by subject wireless cable systems in their records (as specified in § 21.304 of this chapter), and by all other EAS

Participants in their records as specified in § 11.35(a).

(c) Upon receipt of an Emergency Action Termination Message, EAS Participants must follow the termination procedures in the EAS Operating Handbook.

(d) EAS Participants originating emergency communications under this section shall be considered to have conferred rebroadcast authority, as required by section 325(a) of the Communications Act of 1934, 47 U.S.C. § 325(a), to other EAS Participants.

(e) During a national level EAS emergency, EAS Participants may transmit in lieu of the EAS audio feed an audio feed of the President's voice message from an alternative source, such as a broadcast network audio feed.

21. Amend § 11.55 by revising paragraphs (a), (c) introductory text, (c)(4) and (c)(7) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

(a) The EAS may be activated at the State and Local Area levels by EAS Participants at their discretion for day-to-day emergency situations posing a threat to life and property. Examples of natural emergencies which may warrant activation are: tornadoes, floods, hurricanes, earthquakes, heavy snows, icing conditions, widespread fires, etc. Man-made emergencies may include: toxic gas leaks or liquid spills, widespread power failures, industrial explosions, and civil disorders.

(1) DBS providers shall pass through all EAS messages aired on local television broadcast stations carried by DBS providers under the Commission's broadcast signal carriage rules to subscribers receiving those channels.

(2) SDARS licensees and DBS providers may participate in EAS at the state and local level and make their systems capable of receiving and transmitting state and local level EAS messages on all channels. If an SDARS licensee or DBS provider is not capable of receiving and transmitting state and local EAS

message on all channels, it must inform its subscribers, on its website and in writing on an annual basis, of which channels are and are not capable of supplying state and local messages.

* * * * *

(c) Immediately upon receipt of a State or Local Area EAS message, EAS Participants participating in the State or Local Area EAS must do the following:

* * * * *

(4) EAS Participants participating in the State or Local Area EAS must discontinue normal programming and follow the procedures in the State and Local Area plans. Analog and digital television broadcast stations must comply with § 11.54(b)(5); analog cable systems, digital cable systems, and wireless cable systems must comply with § 11.54(b)(6); and DBS providers must comply with § 11.54(b)(7). EAS Participants providing foreign language programming should comply with § 11.54(b)(8).

* * * * *

(7) The times of the above EAS actions must be entered in the EAS Participants' records as specified in §§ 11.35(a) and 11.54(b)(13).

* * * * *

22. Revise § 11.61 to read as follows:

§ 11.61 Tests of EAS procedures.

(a) EAS Participants shall conduct tests at regular intervals, as specified in paragraphs (a)(1) and (a)(2) of this section. Additional tests may be performed anytime. EAS activations and special tests may be performed in lieu of required tests as specified in paragraph (a)(4) of this section. All tests will conform with the procedures in the EAS Operating Handbook.

(1) Required Monthly Tests of the EAS header codes, Attention Signal, Test Script and EOM code.

(i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM and analog and digital LPTV stations are required to transmit only the test script.

(ii) Effective May 31, 2007, DBS providers must comply with this section by monitoring a state or local primary source to participate in testing. Tests should be performed on 10% of all channels monthly (excluding local-into-local channels for which the monthly transmission tests are passed through by the DBS provider), with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested.

(2) Required Weekly Tests:

(i) EAS Header Codes and EOM Codes:

(A) Analog and digital AM, FM, and TV broadcast stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times. Effective December 31, 2006, DAB stations must conduct these tests on all audio streams. Effective December 31, 2006, DTV stations must conduct these tests on all program streams.

(B) Analog cable systems and digital cable systems with 5,000 or more subscribers per headend and wireless cable systems with 5,000 or more subscribers must conduct tests of the EAS Header and EOM Codes at least once a week at random days and times on all programmed channels.

(C) Analog cable systems and digital cable systems serving fewer than 5,000 subscribers per headend and wireless cable systems with fewer than 5,000 subscribers must conduct tests of the EAS Header and EOM Codes at least once a week at random days and times on at least one programmed channel.

(D) SDARS providers must conduct tests of the EAS Header and EOM codes at least once a week at random days and times on all channels.

(ii) DBS providers, analog and digital class D non-commercial educational FM stations, and analog and digital LPTV stations are not required to transmit this test but must log receipt, as specified in §§ 11.35(a) and 11.54(b)(13).

(iii) The EAS weekly test is not required during the week that a monthly test is conducted.

(iv) EAS Participants are not required to transmit a video message when transmitting the required weekly test.

(3) Periodic National Tests. National Primary (NP) sources shall participate in tests as appropriate. The FCC may request a report of these tests.

(4) EAS activations and special tests. The EAS may be activated for emergencies or special tests at the State or Local Area level by an EAS Participant instead of the monthly or weekly tests required by this section. To substitute for a monthly test, activation must include transmission of the EAS header codes, Attention Signal, emergency message and EOM code and comply with the visual message requirements in § 11.51. To substitute for the weekly test of the EAS header codes and EOM codes in paragraph (2)(i) of this section, activation must include transmission of the EAS header and EOM codes. Analog and digital television broadcast stations, analog cable systems, digital cable systems, wireless cable systems, and DBS providers shall comply with the aural and visual message requirements in § 11.51. Special EAS tests at the State and Local Area levels may be conducted on daily basis following procedures in State and Local Area EAS plans.

(b) Entries shall be made in EAS Participant records, as specified in §§ 11.35(a) and 11.54(b)(13).

APPENDIX C

Penetration Data

This Appendix looks at trends of several different types of broadcast and subscription media over a five-year period. It provides quantitative evidence about the consumer adoption of new digital technologies as replacements for the analog broadcast and cable systems that are currently required to implement EAS. As a basis for this evidence, the study relies on 12 annual estimates of usage metrics for 7 different types of broadcast and subscription media. Estimates for each metric measuring media usage were obtained from publicly available sources and documents filed with the Commission, cited to in this Appendix. This study, although not exhaustive, uses the most reliable and detailed estimates publicly available. To provide a consistent comparison across the usage metrics, we used estimates reported for June of each year, when possible. In some cases, only year-end or other quarter estimates were available. Time periods of estimates are identified in the Sources and Notes to the Usage of Broadcast and Subscription Media Technologies chart in this Appendix.

Usage of Broadcast and Subscription Media Technologies

		Jun-00	Jun-01	Jun-02	Jun-03	Jun-04	Jun-05P†
(1)	**US Households**	105,757,000	106,867,000	108,508,000	112,117,000	113,530,000	113,800,000
(2)	**US Population**	282,192,162	285,102,075	287,941,220	290,788,976	293,655,404	295,507,134
(3)	**TV Households**	100,801,720	102,184,810	105,444,330	106,641,910	108,410,160	110,200,000
(4)	**TV Stations**	N/A	1,678	1,712	1,726	1,747	1,747
(5)	**DTV Households**	81,500	280,640	705,640	1,596,640	3,544,640	14,120,728
(6)	**DTV Stations on the Air**	75	119	278	1,247	1,423	1,525
(7)	**Digital Cable Subscribers**	6,000,000	10,900,000	15,900,000	20,000,000	22,900,000	26,000,000
(8)	**Radio Listeners**	135,375,400	136,218,800	140,497,100	141,759,200	144,319,000	145,846,300
(9)	**Radio Stations**	N/A	12,931	13,261	13,418	13,486	13,557
(10)	**DAB Receivers**	0	0	0	0	10,000	100,000
(11)	**DAB Stations**	0	0	0	72	135	359
	Satellite DARS Subscribers	0	0	140,065	797,439	2,580,693	6,232,116
(12)	XM Satellite Radio Subscribers	0	0	136,718	692,253	2,100,352	4,417,490
(13)	Sirius Satellite Radio Subscribers	0	0	3,347	105,186	480,341	1,814,626
	Direct-to-Home Satellite Subscribers	14,463,717	17,070,074	18,940,641	20,862,191	23,495,766	27,530,000
(14)	HSD Subscribers	1,476,717	1,000,074	700,641	502,191	335,766	145,000
(15)	DBS Subscribers	12,987,000	16,070,000	18,240,000	20,360,000	23,160,000	27,385,000

† Preliminary figures for 2005

Usage as a Percentage of Addressable Market

		Jun-00	Jun-01	Jun-02	Jun-03	Jun-04	Jun-05P†
(5)	**DTV Households***	0.08%	0.27%	0.67%	1.50%	3.27%	12.81%
(6)	**DTV Stations on the Air****	4.42%	7.01%	16.37%	73.44%	83.80%	89.81%
(7)	**Digital Cable Subscribers***	5.95%	10.67%	15.08%	18.75%	21.12%	23.59%
(8)	**Radio Listeners*****	47.97%	47.78%	48.79%	48.75%	49.15%	49.35%
(10)	**DAB Receivers*****	0.00%	0.00%	0.00%	0.00%	0.00%	0.03%
(11)	**DAB Stations******	0.00%	0.00%	0.00%	0.54%	1.00%	2.65%
	Satellite DARS Subscribers***	0.00%	0.00%	0.05%	0.27%	0.88%	2.11%
(12)	XM Satellite Radio Subscribers*****	0.00%	0.00%	0.05%	0.24%	0.72%	1.49%
(13)	Sirius Satellite Radio Subscribers*****	0.00%	0.00%	0.00%	0.04%	0.16%	0.61%
	Direct-to-Home Satellite Subscribers*	14.35%	16.71%	17.96%	19.56%	21.67%	24.98%
(14)	HSD Subscribers*	1.46%	0.98%	0.66%	0.47%	0.31%	0.13%
(15)	DBS Subscribers*	12.88%	15.73%	17.30%	19.09%	21.36%	24.85%

* Percentage of TV Households

** Percentage of DTV Stations Authorized (1,698 total)

*** Percentage of US Population

**** Percentage of All Radio Stations

† Preliminary figures for 2005

Sources & Notes:

(1) U.S. Census Bureau, *Current Population Survey* (Sept. 2005) (estimates are from July of each year).

(2) U.S. Census Bureau, *Population Estimates Program* (Jul. 2005) (estimates are from July of each year), *available at* http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=01000US&-ds_name=PEP_2004_EST&-_lang=en&-mt_name=PEP_2004_EST_G2004_T001&-format=&-CONTEXT=dt. U.S. Census Bureau, Population Division, *Interim State Population Projections*, Table A1 (Apr. 21, 2005) (reporting estimate as of July 1, 2005), *available at* http://www.census.gov/population/projections/SummaryTabA1.pdf.

(3) FCC, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Eleventh Annual Report, 20 FCC Rcd 2755, 2869-70, Appendix B, Table B-1 (Feb. 2005) (*Eleventh Annual Video Competition Report*) (citing estimates from Nielsen Media Research). NTCA, *Industry Overview* (citing Nielsen Media Research projections for Jan. 2006) *available at* http://www.ncta.com/Docs/PageContent.cfm?pageID=86.

(4) FCC, *Broadcast Station Totals (Index)* (includes educational stations), *available at* http://www.fcc.gov/mb/audio/totals/index.html.

(5) Consumer Electronics Association (CEA) *ex parte*, EB Docket 04-296 (filed Sept. 2, 2005) (responding to request for estimated cumulative year-end sales of ATSC tuner-equipped DTVs and ATSC tuner sales).

(6) FCC, Media Bureau, *DTV Stations Authorized To Be On The Air*, *available at* http://www.fcc.gov/mb/video/files/dtvonairsum.html (numbers on website change because website is updated on monthly basis to report current status).

(7) NCTA, *2005 Mid-Year Industry Overview*, 13 (estimates are from first quarter of each year) (2005), *available at* http://www.ncta.com/industry_overview/CableMid-YearOverview05FINAL.pdf.

(8) Arbitron, *Persons Using Radio Report* (2005), *available at* http://wargod.arbitron.com/scripts/ndb/ndbradio2.asp (reporting estimate of cumulative persons for summer of each year). Cumulative persons are the total number of different persons who tune to a radio station during the course of a daypart for at least five minutes. *Id.*

(9) FCC, *Broadcast Station Totals (Index)* (includes educational stations), *available at* http://www.fcc.gov/mb/audio/totals/index.html.

(10) iBiquity Digital Corporation estimates (2005).

(11) FCC, Media Bureau, Consolidated DataBase System (CDBS), *available at* http://www.fcc.gov/mb/databases/cdbs/.

(12) XM Satellite Radio Inc., 10-Q and 10-K SEC Filings.

(13) Sirius Satellite Radio Inc., 10-Q and 10-K SEC Filings.

(14) *Eleventh Annual Video Competition Report*, 20 FCC Rcd at 2869-70, Appendix B, Table B-1 (citing estimates from Sky Report, *available at* http://www.skyreport.com/dth_us.htm, SBCA Comments (from current docket and previous *Annual Video Competition Reports*)); Kagan Research, LLC, *The DBS Report*, 2 (May 27, 2005) (projecting estimate as of year-end 2005).

(15) *Id.*

APPENDIX D
FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in EB Docket 04-296 (*EAS NPRM*).[2] The Commission sought written public comment on the proposals in the *EAS NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

2. Today's *Order* establishes rules that expand the reach of the Emergency Alert System (EAS), as currently constituted, to cover the following digital communications technologies that are increasingly being used by the American public to receive news and entertainment – digital television and radio, digital cable, and satellite television and radio. As noted in the *Order*, one of the most fundamental and significant statutory mandates of the Commission is the promotion of safety of life and property through the use of wire and radio communication. Clearly, some level of EAS participation must be established for new digital services to ensure that large portions of the American public are able to receive national and/or regional public alerts and warnings.

3. This *Order* is a follow-up to the *EAS NPRM* that was issued last year. In the *EAS NPRM*, the Commission solicited comment on an array of questions and potential rule changes to contribute to an efficient and technologically current public alert and warning system. The *EAS NPRM* also solicited comments and participation of state and local emergency planning organizations and all telecommunications industries to develop a more effective EAS. Today's *Order* takes initial steps to resolve the issues raised in the *EAS NPRM*.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the IRFA. Nonetheless, the agency considered the potential impact of the rules discussed in the IRFA on small entities and reduced the compliance burden for all small entities (as discussed in Appendix A of the *EAS NPRM*) in order to reduce the economic impact of the rules enacted herein on such entities.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See Review of the Emergency Alert System*, Notice of Proposed Rulemaking, EB Docket No. 04-296, 19 FCC Rcd 15775, Appendix A (2004) (*EAS NPRM*).

[3] 5 U.S.C. § 604(a)(3).

organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

6. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[8] The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[9] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[10] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[11]

7. *Television Broadcasting.* The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $12 million or less in annual receipts.[12] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[13] According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a

[4] 5 U.S.C. § 601(6).

[5] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[6] 15 U.S.C. § 632.

[7] 5 U.S.C. § 601(4).

[8] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[9] 5 U.S.C. § 601(5).

[10] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

[11] *See* SBA, Programs and Services, SBA Pamphlet No. CO-0028, 40 (Jul. 2002).

[12] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 515120.

[13] Office of Management and Budget, North American Industry Classification System: United States, 1997, at 509 (1997). This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. *Id.* at 502-05, NAICS code 512120, Motion Picture and Video Production; NAICS code 512120, Motion Picture and Video Distribution; NAICS code 512191, Teleproduction and Other Post-Production Services; and NAICS code 512199, Other Motion Picture and Video Industries.